From: Richard M. DeLio
To: Microsoft Settlement
Date: 1/9/02 3:43pm

Subject: Microsoft Settlement

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Dear Sirs:

Re. the Microsoft settlement, please convey my views to the court as follows:

As an Information Systems Consultant and a heavy user of Microsoft and non-Microsoft PC products, as well as software on other platforms, I can honestly say that Microsoft has brought much more positive progress to the information systems user community than any other computer hardware or software company. With regard to many of the points brought out in trial, I would offer the following comments:

- 1. Monopoly is a matter of frame of reference. If you ask if Microsoft has a monopoly in the operating system business for Intel-based computers, they do. If you base the definition on the absolute number of computers, irrespective of size, Microsoft may still have a monopoly. I believe both of these definitions to be incorrect. I would propose that for a monopoly to exist, it should be based on total computing utilization throughout the US or the world. Yes, Microsoft has a large number of installed operating systems, and some are installed on computers with relatively high raw computing power. But many of these computers are used for a short period of time each day or few days and then often just to send e-mail or surf the Internet, clearly not "computing." If one were to compare the operating systems installed against the utilized computing power, I would doubt any monopoly exists. On PC's doing very little computing there are a very large number of Windows installations, but on much larger, heavily used machines you would find IBM, Sun and Hewlett-Packard installations. Simply put, Microsoft does not have a monopoly based on the total utilization of computing power. This is a very important difference.
- 2. Microsoft competitors have argued that Windows pricing is higher than it should be. I would counter that most people pay far less, through OEM installation of MS Windows, than the suggested retail price, or even the "street" retail upgrade price. However, on pricing, I believe we need to place things in perspective. For anywhere from \$40-100, based on the version of Windows installed, the consumer receives a technically advanced product which will be used on average 4-5 years before a new computer is purchased. In comparison, a pair of brand-name sneakers cost more than Windows and will likely be wreaked within 1 year. There is not a single consumer product of any type on the market today that provides the functionality of Windows in comparison with its cost over the life of the product.

In addition, Microsoft, unlike any other computer industry company in the last year, increased its research and development budget to provide even greater benefit to the consumer in the future. The money spent by consumers on Microsoft products provided both immediate benefits to the consumers, greater in value than any other computer product, and an investment in future benefits.

- 3. Much has been said of Microsoft's supposedly predatory practices re. Netscape Communications. Nothing has been said of Netscape's actions during this period. Prior to Microsoft's release of Internet Explorer (MS IE), Netscape had been giving away its Navigator Internet browser. When it effectively had a monopoly in the browser arena, just prior to the release of MS IE, Netscape announced that they would be charging for this product in the future. Essentially, they created a monopoly and then attempted predatory pricing. And, the price they wanted to charge was approximately what most people were paying at that time for all of Microsoft Windows, a product with far great functionality, and therefore value, for the money. I should also add that the Netscape personnel did not develop their product from scratch. They had been working on an Internet browser in a college environment, and simply left, formed a company, made a few changes and released it under the Netscape name.
- 4. Microsoft did not initially try to compete with Netscape. In fact, Microsoft competes in a very small number of computer software product

areas, choosing instead to offer Windows as an open base on which thousands of products can operate. Netscape personnel, however, announced at trade show after trade show that they would "destroy" Microsoft Windows as a platform. The Internet would be the new platform -- actually a ridiculous idea, like saying if mass transit had great schedules we would all get rid of our cars. Microsoft attempted to work with Netscape and when that went nowhere, it decided to offer a better product and cut off the Netscape attempt at predatory pricing.

5. Microsoft competitors have argued that Internet Explorer was a standalone application and should never have been put into the Windows operating system. I believe this is wrong. I believe there is a very simple test for what is appropriate in an operating system and what is not. If a program creates or manipulates data, like a word processor or spreadsheet program it is an application and should not be added to an operating system. If a program simply displays information or manipulates data at the file level, e.g. copying or moving an entire file, it should be included in an operating system. In fact, the only times Microsoft has violated this approach was when they provided a very rudimentary word processor in Windows as a convenience to users, but not to replace a complete word processor, and a simple e-mail program (which still needed an Internet Service Provider (ISP) to be usable).

Regardless of this, anyone who wished to have Netscape Navigator as their default Internet browser could do so, simply by specifying that within the program of their Internet Service Provider or, even more simply, by placing the Navigator program on the Start-Programs list as he/she would do with any other program - word processor, spreadsheet, photo editing, etc. - and then having Navigator telephone the ISP.

6. But at the heart of this litigation from the beginning has been the hypocrisy and manipulation by Microsoft's competitors combined with a bluntly terrible defense by Microsoft. The competition has used the government to try to compete against Microsoft rather than relying on an open marketplace. And, the dissenting nine states are still being used by Microsoft's competitors. I would ask the current judge to ask one simple question regarding these nine states: Would they be suing Microsoft it Microsoft were based in their states. I strongly doubt that. They don't care one iota for their consumers; they only care about the MS competitors who are based in their states and exercise political influence.

Competitors like AOL, Oracle, Sun and IBM have long complained that Microsoft has produced mediocre products and did not deserve its success. Yet, with the exception of Oracle, Microsoft's products often exceeded the functionality and value of those provided by the competition. The consumer is not stupid. Offered a better product, with better pricing, the consumer will go with the better product. Often the consumer will go with the better product even without better pricing, since we are not talking about large sums of money for these products (tens of dollars to hundreds, not thousands).

Competitors have complained that Windows is a closed system and source code should be opened for all to see or modify. The truth is that Windows is the most open operating system ever produced. If it were not, there would not be literally thousands of non-Microsoft products operating very successfully under Windows today.

7. The bottom line of all of this, however, is that Microsoft has been successful because they have provided a good, reasonably priced product, which is an open environment on which thousands of computer programs are available. In addition, Microsoft has provided a platform with integration of subsystems which should be in an operating system, yet, not eliminating the ability of the user to run alternative products.

I urge the court to find in favor of Microsoft and the settlement with the Department of Justice, a settlement which, I believe, is even more burdensome on Microsoft than it should be.

Thank you.

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